

TESTIMONY OF JAMES NEIL
DIRECTOR OF OPERATIONS
STATE MARSHAL COMMISSION
GOVERNMENT ADMINISTRATION AND ELECTIONS COMMITTEE
MARCH 16, 2009

Good Afternoon, Senator Slossberg, Representative Spallone, and members of the Government Administration and Elections Committee. My name is James Neil and I am the Director of Operations for the State Marshal Commission. As you know, the State Marshal Commission (SMC) oversees and regulates the complex operations of Connecticut's State Marshals.

I am here to testify against certain portions of Bill #839 - An Act Concerning Mergers and Consolidations of Various State Agencies. I strongly oppose the elimination of the independent State Marshal Commission.

The State Marshal Commission was created by the legislature in 2000, as the successor to the former Sheriff's Department, a constitutionally created office. As an independent regulatory body, the SMC is a non-partisan eight member body with appointees from each of the three branches of government. The idea that the mission of the State Marshal Commission can be integrated on a constitutional basis and at a cost savings into an administrative agency is not sound. The SMC is a regulatory and oversight body that oversees a monopoly business that reported a gross income of nearly \$22 million dollars in 2007, and handled between \$30-35 million in their trust accounts - both amounts are sure to increase substantially for 2008 and 2009. The current proposal is to eliminate the SMC and to transfer the duties to DAS, an administrative agency that has no regulatory function. Although there is a perceived savings of approximately \$450,000 in the current proposal, the practical ability and funding to implement the duty of the State to oversee a critically vital governmental function is absent.

In my opinion, for the reasons enunciated below, our collective mission at this critical point in time is to find ways to generate revenue, cut costs, and provide even more efficient regulation and government while preserving constitutional balances in core government functions.

Brief Background

The State's Marshals, first as Sheriffs, have been a critical function of state government since the passage of the state constitution and still to this day some of the statutory provisions regarding the functions of State Marshals can be traced back to the late 1700's. Today they remain a critical function of the day to day operations of Connecticut's court system and, in fact, the court system could not function properly without them - they are, essentially give notice of legal proceedings and act on judgements and are the law enforcement unit of the Civil Justice System.

Judges, attorneys and State Marshals are the three core elements of the professional, civil justice system. Yearly, thousands of court documents pass through the

hands of the 220 State Marshals who are specifically designated to do the work. Essentially, most civil litigation cannot occur without the marshals. Additionally, traditional government functions that allow for trespass, arrest, evictions, and seizure of personal property, through service of process and executions by State Marshals, requires regulation and oversight.

The Marshals provide a wide variety of services to the citizens of Connecticut each and every day including but not limited to: civil service of process which includes executions on judgments, the service of temporary restraining orders, and the execution of *capias mittimus* warrants whereby individuals are taken into custody for the failure to appear in a civil matter – usually on child support matters. Currently there are 220 State Marshals and we are in the process of appointing 21 additional Marshals. There are more than 100,000 cases either pending or filed in Connecticut's civil courts each year and if we assume for a moment that there is a minimum of 2 documents in each case that requires service of process, in some cases there are considerably more, State Marshals serve a minimum of 200,000 documents each year, and that is just the beginning – there are also thousands of court ordered civil executions that are served and processed by State Marshals each and every year, and the numbers are growing. As you can see it is a very active business which is critical to the operation of the civil justice system.

Legal and Constitutional Concerns

Prior to 2000, the constitutional significance of civil process and executions was reflected in the position of sheriff being placed in the constitution where it had been for more than 200 years. When this provision was repealed in 2000, the legislature established the State Marshal Commission to oversee and regulate state marshals. As the Attorney General has noted, service of process in Connecticut has always been considered a sovereign function of government entrusted to public officials empowered by law. State Marshals are public officers who take an oath to uphold the Constitution and the laws of Connecticut.

The legislature understood the power of the appointment as a State Marshal in creating the State Marshal Commission. State Marshals have the power to trespass, to remove people from their homes and businesses from their locations, to arrest, to garnish wages, execute against bank accounts and personal assets, and take possession of property such as cars, boats, and manufacturing equipment and supplies. These broad and enormous powers cannot be vested in individuals without regulatory oversight – that was indeed part of the problem with the old sheriff system.

The legislature, in 2000, carefully considered its obligations under the constitution and to each branch of government in this area. To that end it created the State Marshal Commission, with commission members appointed by all three branches of government, and it placed the Commission in the executive branch for administrative purposes only. In order to make an appropriate delegation of its regulatory powers to the Commission, the legislature had to declare its policy on service of process and execution of judgments, establish primary standards for carrying it out, to which the Commission needed to conform and to ensure proper regard for the protection of the

public interest. It appropriately did so through statutory enactments creating the State Marshal Commission.

Ending the independent function of the State Marshal Commission and placing its functions solely in the executive branch and eliminating the funding for those functions puts the constitutional duties of all three branches at issue. It also puts the judicial branch at risk for a substantial destabilization of its courts and civil matters in general. The current system is running well, due in part to the unsung consistency of the state marshals and the careful oversight of the SMC. Millions of dollars of third-party money and hundreds of thousands of services and executions are handled by state marshals every year under the guidance of the SMC. The nature of State Marshals' tasks and the need for State Marshals to be competent, accountable public officials under appropriate oversight creates unique regulatory needs that the SMC fulfills. Consider that even a few short days of the serious disruption of state marshal work would create havoc in the judicial branch.

In Connecticut there is a right to open access to courts to commence and pursue redress for injuries after due course of law. If an individual is denied open access or remedies, through the denial of service of valid process or the execution of a judgment based on the lack of regulation, or inadequate regulation by the state over such procedures and state marshals, the state could face liability claims under the constitution and state statutes. That is one of the reasons state marshals are bonded. Just a few claims would cost the state more money than is currently allocated to the SMC. Additionally, disruption to the orderly functioning of the judicial branch would raise claims under the separation of powers doctrine and could engender additional claims or costs to re-stabilize the system.

Given the constitutional framework, the state has an obligation to maintain a system for viable, regulated service of process and execution of judgments. The recommendation to eliminate the State Marshal Commission and to remove all funding does not address the constitutional needs and obligations of the three branches of government. Money will inevitably have to be allocated to regulate service of process and execution of judgments and state marshals, as a core government function and to protect the state from liability. The State Marshal Commission balances the interests of all three branches of government and is extremely cost effective. It is critical that the SMC be retained with reasonable funding for staff.

The State Marshal Commission Today

As you are aware, the State Marshal Commission has an extremely large mission and a very small amount of resources. The Commission appoints, trains, disciplines, and oversees and regulates the activities of Connecticut's State Marshals, who are charged with serving all manner of legal process in the State. It should be noted that State Marshals are independent contractors with State appointments and must be distinguished from Judicial Marshals, who are State employees within the Judicial Branch and who are responsible for courthouse security. The SMC has in place a complaint and hearing procedure in full compliance with the Uniform Administrative

Procedures Act where the citizens of Connecticut can bring disputes they may have with any of Connecticut's State Marshals.

Additionally, the administrative staff fields thousands of contacts – calls, letters, emails – from citizens, lawyers, state agencies, and judges annually with questions and problems with the complex world of civil process which is the means by which the court exercises its jurisdiction over individuals and property.

Currently, the staff of the Commission consists of only 2 professionals and 2 administrative assistants. As a result, legislative mandates to appoint, train, audit, and discipline have been challenging to implement. In our opinion, in order for the office to fully, and effectively implement certain statutory mandates, it is imperative we have additional staff, however, in these extraordinary difficult times the Commission can and will do without.

Because the SMC is small, its budget is exceedingly simple – personal services and other expenses. I have testified in front of the full Appropriations Committee, as well as the subcommittee, and have offered savings in both accounts, including a 25% reduction in our Other Expense account. The SMC has had a culture of frugality and responsible spending in the past and that will continue into the future. As you can see by the table below, the SMC has returned an average of approximately 37% of its OE budget over the past 5 years:

<u>Year</u>	<u>Funds Spent</u>	<u>Appropriation</u>	<u>Unspent Funds</u>
2004	\$81,692.70	\$106,374.32	\$24,681.62
2005	\$74,913.85	\$125,325.00	\$50,411.15
2006	\$35,504.17	\$113,801.00	\$78,296.83
2007	\$99,078.02	\$113,801.00	\$14,722.98
2008	\$94,659.14	\$162,870.00	\$68,210.86

Conclusion

During times of general economic hardship State Marshals see an increase in their workload. The steep rise in home and business foreclosures, the eviction of families and businesses from their homes and commercial space, and the increase in litigation and the associated execution of judgments as individuals and companies look to gain every financial advantage possible all place additional stress and work on the ranks of Connecticut's State Marshals. It is during this time that more oversight is needed, not less. State Marshals assist citizens in countless areas from civil and family court matters, housing court and probate court matters and numerous other legal and administrative procedures. Additionally, State Marshals execute city and state tax warrants and in 2007, State Marshals collected more than \$10 million for Connecticut's cities and municipalities – they also collected approximately \$20 million for private parties as a result of litigation. Also under the direction of the SMC the State Marshals cover the service of restraining orders every day and in every courthouse helping to protect the citizens of Connecticut from harm. It is during this time that the mission of the State Marshal Commission is more critical than ever.